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NO. 93498-3

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent,

v.

JOSUE CRUZ MEDINA, Petitioner.

ANSWER TO PETITION FOR REVIEW

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Senior Deputy Prosecuting Attorney
Attorney for Respondent

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 ORIGINAL

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RULES

RAP 13.4(b)1,8

I. IDENTITY OF RESPONDENT

The Respondent is the State of Washington.

II. COURT OF APPEALS DECISION

At issue is the unpublished court of appeals decision filed on July 26, 2016 in Division Three of the Court of Appeals.

III. ISSUE PRESENTED FOR REVIEW

A. Does the unpublished court of appeals decision meet the criteria for review under RAP 13.4(b)?

IV. STATEMENT OF THE CASE

Josue Cruz Medina was charged with First Degree Unlawful Possession of a Firearm. CP 4. His attorney filed a motion to suppress the evidence, claiming that the officer lacked a reasonable suspicion upon which to stop Medina. CP 17. A suppression hearing was held in which Officer Darin Scott testified for the State.

Officer Scott, with 23 years of law enforcement experience, testified that he received information about a 911 caller reporting a suspicious male that had broken down alongside the road. RP 5, 7. Officer Scott met with the caller. The caller reported to Officer Scott that a male came to her home asking for gas for his truck and that the male was possibly on drugs. RP 9. The caller's husband took gas to the truck and saw a firearm on the seat of the truck. RP 10. However, the suspicious male was unable to start the truck. RP 13. The male grabbed the gun and

put it inside his pants or his shirt. RP 11. He then loaded up items from the bed of the truck into a green ATV and left the area. RP 13. He returned after a little while and took more items out of the truck, loaded it onto the ATV, and left again. RP 13. The reporting party described the male as Hispanic, 30 to 40 years old, with a blue knit hat and blue Seahawks sweater. RP 14.

Officer Scott looked at the truck, and saw a broken ignition, expired tabs, and a blue tarp covering items in the bed of the truck. RP 12. He ran the registration and license and it revealed that the tabs were indeed expired. RP 12. The truck was registered to a 61-year-old person. RP 14. The license plate on the truck was not the plate that was supposed to be on the truck according to DOL. RP 12. Based on these facts, Officer Scott believed that the truck was possibly stolen. RP 12-13, 20.

On the way to the caller's house, Officer Scott had observed a green ATV less than half a mile away from the caller's house. RP 15. He drove to that location and saw Medina sitting on the ATV. RP 15. Medina was wearing a blue hat and tight green shirt. RP 16. When the officer pulled up, Medina turned around briefly, looked at the officer, and then looked away from the officer. RP 17.

Officer Scott asked Medina if he needed any help with his truck. RP 18. Medina said that it was not his truck and that he did not know

what the officer was talking about. RP 18. Medina matched the description the caller gave him and matched a photo that the officer saw on the caller's phone. RP 19. Officer Scott saw that Medina's sweater pocket had an L-shaped item in it, which could be a firearm. RP 21.

Officer Scott asked Medina to pull up his shirt. RP 19. Medina did so and Officer Scott saw part of a Seahawks emblem. RP 19. Medina refused to answer any questions, including how he got to his location. RP 22. He also denied having a weapon or any identification. RP 25, 27. Officer Scott noted that Medina was argumentative and was paranoid, an indicator of amphetamine use. RP 24-6.

Officer Scott testified that the ATV had a broken ignition and that raised a suspicion that the ATV was possibly stolen as well. RP 25-27. Officer Scott thought he might have to discharge his weapon so he called for backup for safety reasons. RP 26, 29. After other officers arrived, a weapons frisk was conducted and a small caliber hand gun was found in the front pocket of Medina's blue sweater. RP 29.

The trial court found that the stop was justified considering the totality of the circumstances and denied Medina's motion to suppress. CP 62-3. Written findings of fact and conclusions of law were filed. CP 58-64.

Medina was found guilty by a trial to the court. CP 73. He was sentenced on two cases 14-1-00353-1 and 14-1-00576-3. CP 74, RP 113. On this case, 14-1-00353-1, the State sought a sentence of 116 months, at the top of the standard range. The defense sought a sentence of 87 months, at the bottom of the standard range. RP 105-6.

The trial judge sentenced Medina to the top of the range after taking into consideration his past history. CP 75. The court set forth his criminal history in the judgment and sentence, listing all 5 prior adult convictions, 9 juvenile non-violent convictions, and the two “other current convictions” from 14-1-00576-3. CP 74. The offender score was listed as “9+” and the standard range was listed as 87-116 months. CP 74.

The Court of Appeals affirmed the conviction and sentence but remanded to correct a scrivener’s error in the judgment and sentence.

V. ARGUMENT

A. THE TRIAL COURT CORRECTLY DENIED MEDINA’S MOTION TO SUPPRESS BECAUSE THE STOP WAS A VALID *TERRY* STOP.

Under the Fourth Amendment to the United States Constitution and article I, section 7 of Washington’s constitution, an officer may not seize a person without a warrant. *State v. Garvin*, 166 Wn.2d 242, 248, 207 P.3d 1266 (2009). But a few carefully drawn exceptions exist,

including the *Terry*¹ investigative stop. *State v. Fuentes*, 183 Wn.2d 149, 157-158, 352 P.3d 152 (2015). Under this exception, an officer may, without a warrant, briefly detain a person for questioning if the officer has reasonable suspicion that the person stopped is or is about to be engaged in criminal activity. *Id.* at 158.

A valid *Terry* stop requires that the officer have reasonable suspicion of criminal activity based on specific and articulable facts known to the officer at the inception of the stop. *Id.* In evaluating the reasonableness of the officer's suspicion, the reviewing court looks at the totality of the circumstances known to the officer. *Id.* The totality of circumstances includes the officer's training and experience, the location of the stop, the conduct of the person detained, the purpose of the stop, and the amount of physical intrusion on the suspect's liberty. *Id.*

Here, Medina did not assign error to any findings of fact. Therefore, the findings are verities on appeal. *In re Welfare of A.W.*, 182 Wn.2d 689, 711, 344 P.3d 1186 (2015). Furthermore, the unchallenged findings of fact support the trial court's denial of Medina's motion to suppress.

¹ *Terry v. Ohio*, 392 U.S. 1 (1968).

Officer Scott was an experienced officer with 23 years of law enforcement experience responding to a detailed report of suspicious activity. He responded to a call of a suspicious male who had broken down alongside the road. He then learned that the male took items from the truck and transported them on an ATV and came back and took more items. In addition, he was told that the male appeared high and had a gun. On top of that, the officer learned that the truck has a broken ignition, expired tabs, and the wrong license plates. Almost immediately thereafter, he found Medina, who matched the general description of the suspect, and the green ATV mentioned by the reporting party.

Medina denied any knowledge of the truck, or having a firearm. He also appeared high to the officer, and was argumentative with the officer. At this point, Medina's actions and words gave the officer further reasonable suspicion that Medina was not only in possession of a stolen truck, but also in possession of a stolen ATV.

This was a classic *Terry* stop. The undisputed facts here, together with the rational inferences from those facts, establish that there was a reasonable suspicion that criminal conduct had occurred. Based on the totality of these circumstances, combined with the officer's training and experience, Officer Scott has a reasonable suspicion that Medina was in possession of the stolen truck and ATV, thereby justifying a *Terry* stop.

As such, the Court of Appeals was correct in concluding that the trial court properly denied Medina's motion to suppress.

B. THE TRIAL COURT PROPERLY CALCULATED MEDINA'S OFFENDER SCORE.

The State sought a sentence of 116, at the top of the standard range. The defense sought a sentence of 87 months, at the bottom of the standard range. The trial judge sentenced Medina to the top of the range after taking into consideration Medina's past criminal history. CP 75. The offender score was listed as 9+ and the standard range was listed as 87-116 months. CP 74.

On appeal, Medina claimed that the court imposed a top of the range sentence based on a misunderstanding of his offender score. Medina argued that the offender score was calculated at 14 points. Appellant's Brief at 6, 15. However, no one calculated his offenders score as 14 points. Medina points to the State's argument at sentencing that Medina has 14 prior *felonies*. This was an accurate statement and a proper description of his criminal history. It was also proper argument as it was undisputed that Medina had 14 prior felonies. The offender score on the judgment and sentence was listed as 9+, which is a correct calculation. Medina had 9 juvenile nonviolent convictions, 5 adult felony convictions,

and 2 current felony convictions. Accordingly, the Court of Appeals found that his offender score was properly calculated.

VI. CONCLUSION

This case does not meet any of the criteria in RAP 13.4(b). First of all, the decision is not in conflict with a decision of the Supreme Court or another decision of the Court of Appeals. Second, a significant question of law under the Constitution of the State of Washington or of the United States is not involved. Lastly, the petition does not involve an issue of substantial public interest that should be determined by the Supreme Court. In sum, for the foregoing reasons, the State asks that the court deny Medina's Petition for Review.

Respectfully submitted this 29th day of Sept., 2016,

s/Tamara A. Hanlon
TAMARA A. HANLON, WSBA 28345
Senior Deputy Prosecuting Attorney

DECLARATION OF SERVICE

I, Tamara A. Hanlon, state that on September 29, 2016, by deposit into the US Mail, I mailed a copy of ANSWER TO PETITION FOR REVIEW to:

Josue Cruz Medina #775081
Washington State Penitentiary
1313 North 13th Avenue
Walla Walla, WA 99362

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 29th day of September, 2016 at Yakima, Washington.

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Good morning,

Attached for filing is the State's Answer to Petition in case number 93498-3, State v. Josue Cruz Medina.

Thank you,

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